

REMARKS

Summary of Claim Amendments

Independent claim 9 has been amended to include the steps “providing exhaust gas discharged from the first exhaust path to a downstream side” and “providing exhaust gas supplied to the intake path from the first exhaust path.” No new matter has been added and no new issues have been raised by these amendments. Upon entry of the above amendments, claims 1-12 will remain in the application.

Request for Reconsideration of Refusal to Enter Amendment Filed June 19, 2008

Applicant is hereby resubmitting the response filed June 19, 2008 with a request for the examiner to reconsider his refusal to enter the amendment to claim 9 filed on June 19, 2008. Reconsideration is appropriate for at least the following reasons.

Factual background

The examiner called Applicant’s undersigned representative on May 7, 2008, to indicate that he would allow the application if certain amendments were made to claim 9 to bring claim 9 in line with claim 1. Applicant’s representative indicated that the proposed amendments to claim 9 would have to be approved by the Applicant, who is in Japan, and that approval would take a couple of days. The examiner indicated that this would not pose a problem so long as he was able to submit his action to be counted by the end of the week (May 9).

On May 7, 2008, Applicant’s representative forwarded a draft amendment to claim 9 to the Applicant in Japan. On May 8, 2008, Applicant’s representative received approval of the proposed amendment from the Applicant. Applicant’s representative called the examiner on May 8, 2008, to indicate that the Applicant had approved the proposed changes to claim 9, but the examiner was not available. Applicant’s representative left a message indicating that the Applicant had approved the proposed changes to claim 9 and that the examiner and Applicant’s representative needed to discuss entry of the proposed amendment to claim 9 by Examiner’s Amendment.

When Applicant’s representative still had not heard from the examiner, Applicant’s representative called the examiner again on May 9, 2008. Applicant’s representative was surprised to learn from the examiner that the examiner had already prepared an Official

Action and submitted it to be counted. Applicant's representative indicated that he would file the proposed amendment to claim 9 in response to the Official Action.

A response amending claim 9 as proposed was submitted in response to the Final Rejection mailed May 12, 2008, on June 19, 2008. No other amendments were made.

On July 11, 2008, the examiner issued an Advisory Action alleging that the proposed Response filed June 19, 2008 raised "new issues" and would not be entered. No explanation for this action was given.

On July 30, 2008, Applicant's representative contacted the examiner to ask why the proposed amendment to claim 9 was not entered. Applicant's representative pointed out that the amendment to claim 9 tracked the amendment to claim 1 as the examiner had initially requested on May 7, 2008. The examiner indicated that he did not remember the May 7, 2008, discussion and suggested to Applicant's representative that he submit the present request for reconsideration.

Request for Reconsideration

The proposed amendments to claim 9 insert the following text:

providing exhaust gas discharged from the first exhaust path to a downstream side;
providing exhaust gas supplied to the intake path from the first exhaust path;

and make the following changes:

decreasing a flow rate of [an] the exhaust gas discharged to [a] the downstream side from the first exhaust path and increasing a flow rate of [an] the exhaust gas recirculated to the intake path from the first exhaust path based on said temperature information in such a manner that a ratio of the flow rate of the exhaust gas discharged from the first exhaust path with respect to the flow rate of the exhaust gas discharged from the second exhaust path becomes smaller in the case that the temperature of the catalyst arranged in the second exhaust path exists in a preset low temperature region than in other cases.

These changes do NOT raise any new issues as they merely bring claim 9 into line with the language of claim 1 as the examiner requested *prior* to issuance of the Final Rejection.

Moreover, support for the proposed amendments is found in claim 1 as presented prior to the

Final Rejection and, accordingly, refusal to enter the proposed changes is improper in any case.

Support for the proposed changes to claim 9 may be found in the following bolded language of claim 1:

an exhaust flow rate adjusting section adjusting a flow rate of the **exhaust gas discharged from the first exhaust path to a downstream side;**
a supply flow rate adjusting section adjusting a flow rate of the exhaust gas **supplied to the intake path from the first exhaust path via the first exhaust gas recirculating path;** and
a control section controlling an opening degree of the exhaust flow rate adjusting section and an opening degree of the supply flow rate adjusting section **on the basis of information relating to the temperature of at least one of the catalysts**, wherein the control section decreases the opening degree of the exhaust flow rate adjusting section and increases the opening degree of the supply flow rate adjusting section in such a manner that a ratio of the flow rate of the exhaust gas discharged from the first exhaust path with respect to the flow rate of the exhaust gas discharged from the other exhaust paths than the first exhaust path becomes smaller in a case that the temperature of the catalyst arranged in the other exhaust paths exists in a preset low temperature region than **in** other cases.

Given that the proposed amendments to claim 9 were requested by the examiner and clearly supported by claim 1 prior to issuance of the Final Rejection, no new issues were raised by the proposed amendments to claim 9. In particular, all claimed features were clearly searched and considered by the examiner prior to issuance of the Final Rejection. The examiner is accordingly asked to enter the proposed amendments to claim 9 and to allow the application.

The following is a repeat of the remarks submitted with the June 19, 2008, amendment response. Reconsideration and allowance of the application are requested.

Claim Rejections – 35 U.S.C. §102(b) – Asada

Claim 9 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Asada et al. (US 5,562,086) (hereafter “Asada”). This rejection is respectfully traversed.

As noted above, claim 9 has been amended in line with claim 1 to further recite the steps of “providing exhaust gas discharged from the first exhaust path to a downstream side” and “providing exhaust gas supplied to the intake path from the first exhaust path.” Such features in combination with the other steps of claim 9 are not believed to be shown or

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suggested by Asada. On the contrary, Asada merely discloses changing "full cylinder operation" to "partial cylinder operation" when the engine load is decreased. As recited in column 4, lines 47-53, of Asada, when the first throttle valve 10a is closed, the recirculation valve 16a of the idle cylinder group is made to be open wide, and the recirculated gas passage 15a is supplied primarily with "air" - not with the exhaust gas. Moreover, Asada does not disclose the claimed steps of "providing exhaust gas discharged from the first exhaust path to a downstream side" and "providing exhaust gas supplied to the intake path from the first exhaust path" as now claimed. Thus, Asada does not adjust the ratio of the flow rate of the exhaust gas as claimed. Withdrawal of the rejection of claim 9 is solicited.

Allowable Subject Matter

Applicant appreciates the Examiner's indication that claims 1-8 and 11-12 are allowed and that claim 10 would be allowable if placed in independent form. In view of the amendments to claim 9, from which claim 10 depends, all claims are not believed to be in condition for allowance.

Conclusions

The proposed amendments to claim 9 do not introduce any new issues and should be entered to place the present application in condition for allowance. Entry of the above amendments and issuance of a Notice of Allowability are solicited.

In the event that the above amendments do not place the application in condition for allowance, the Examiner is encouraged to contact Applicant's undersigned representative to resolve any remaining issues.

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